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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-186847

DATE: October 6, 1976

MATTER OF: Broken Lance Enterprises, Inc.

DIGEST:

Agency properly permitted low bidder to withdraw rather than correct bid mistake because correction as requested would have increased low bid to within 1 percent of next acceptable bid, and other evidence submitted by bidder shows another "intended" bid price within less than 1/2 of one percent of next acceptable bid.

Invitation for bids (IFB) No. F03601-76-09024 was issued on April 15, 1976, by the Department of the Air Force to solicit bids to furnish mess attendant services for two dining halls at Little Rock Air Force Base, Arkansas. Bids were opened on May 13, 1976, and Broken Lance Enterprises, Inc. (BLE), was the low bidder at \$272,577.11.

By mailgram received at the procuring office on May 17, BLE alleged a mistake in bid and requested permission to withdraw. By letter dated May 18, BLE supplemented the request as follows:

"The following requirements were not included in the compilation of my bid as submitted. This occurred as a result of the worksheet for items a thru c below became attached to another set of work papers on the desk and was not discovered till after my bid was submitted and results obtained from your office after bid opening.

- "a. Working Supervisor \$8,000.00 o/a
 Ref: par F, pg 4 of 18
- "b. Cashier \$5,000.00 p/a
 Ref: par 1B (17)
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"c. Equipment and Material Ref: par 6 of pg 5 of 18	\$27,000.00
Uniforms Ref: par 3B (1)(2) pg 3 of 18	Included in above.
	<hr/>
	\$40,000.00

"In addition to the total I would have added 2.4% Holiday Pay, 2.7% Vacation Pay, and 10.5% Taxes for Cashier and Supervisor cost in addition to 9.5% G & A and 10% profit for all the above items."

Subsequently, the second and third low bidders, upon request for verification of their bids, also alleged mistakes and each requested permission to withdraw. J. T. Enterprises, Inc., the fourth low bidder was then contacted and verified its bid of \$365,726.82 (\$329,154.14 with discount).

The three mistake allegations were forwarded by the procuring office to Command Headquarters, the Air Force Logistics Command (AFLC) for resolution in accordance with Armed Services Procurement Regulation (ASPR) § 2-406.3(b)(3) (1975 ed.). BLE was then requested to and did submit, by letter of June 7, worksheets to document the alleged mistake, including the one allegedly initially misplaced. At that time, BLE also requested permission to increase the bid price by \$53,388.24 to \$325,915.35, on the basis that the initially misplaced worksheet indicated that \$53,388.24 was the amount not included in the bid. BLE also stated that the reason the submitted bid price was not the same as the \$272,375.80 figure on the worksheet reflecting the items it had included was as follows:

"* * * I utilized a unit price of \$.3679 per meal in extending the total cost for the estimated number of meals shown for each month rather than the unit price of \$.3679765 shown on the bottom of worksheet.
* * * The purpose of this was to eliminate working with a 7 digit number."

Our Office has consistently held that to permit correction of an error in bid prior to award, a bidder must submit clear and

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convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price. 53 Comp. Gen. 232 (1973); 51 id. 503 (1972). These same basic requirements for the correction of a bid are found in ASPR § 2-406.3(a)(2) (1975 ed.), which provides:

"* * * if the evidence is clear and convincing both as to existence of the mistake and as to the bid actually intended, and if the bid, both as uncorrected and as corrected, is the lowest received, a determination may be made to correct the bid and not permit its withdrawal."

On June 22, pursuant to authority delegated under ASPR § 2-406.3(b), AFLC issued an administrative determination permitting BLE to withdraw but not modify the bid because, although BLE had presented clear and convincing evidence that a mistake had been made, it had not submitted clear and convincing evidence of the bid actually intended. By letter dated June 28, BLE filed a protest in this Office against award to any other firm. On June 29, BLE was informed by the Air Force of the administrative determination, and that award had been made to J. T. Enterprises, Inc., on June 28.

The rationale for the Air Force's determination was stated in a memorandum dated August 6 of the Acting Staff Judge Advocate, AFLC, as follows:

"3. Regarding the * * * determination, that evidence as to the intended bid was not clear and convincing, the evidentiary documents (the mailgram, two letters, and the original 'worksheets' submitted by Broken Lance) presented conflicts and uncertainties which could not all be resolved so as to achieve the clear and convincing standard required.

"4. At the outset, the worksheets do not show a clear formula or procedure for integrating the figures from the two pages. Two possibilities presented themselves. First the sum (\$53,333.24) from the second page could have been added to the \$272,375.80 of the first page for a total of \$325,714.04. Dividing

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this by 740,000 (the number of meals for the contract period) would result in a price per meal of .4401541. Question, what would happen to this figure; would it be rounded off to .4402? In any event, to continue the original train, the first possible procedure would be to calculate a new unit price per meal and multiply it by the monthly meal requirements. Assuming meal price of .4402, the total price that would be achieved is \$325,890.09. This does not resolve the issue of whether in calculating the monthly base prices, the price for 52,500 meals would continue to be the same as the price for 52,000 meals (see monthly prices for July 1976, October 1976, and July 1977 in the original bid).

"5. The other possible procedure would be simply to add the \$53,338.24 to \$272,577.11, the original bid submitted, to arrive at the new total of \$325,915.35. Bidder claims this was its intent, and that this intent is manifested clearly and convincingly in the worksheets.
* * *

The figure used in paragraph 4 for the number of meals in the contract period should have been 740,400, rather than 740,000, in which case the total price as calculated by the Air Force would be \$325,701.96. In addition, we note at least one other possible bid of \$328,179.67, the sum of the bid price submitted and \$55,602.56, an amount arrived at by applying the method of calculation used in the initially misplaced worksheet to the figures supplied by BLE in the May 18 letter.

The memorandum went on to state that, since the above analysis shows that the worksheets presented at least two possible bids other than the bid allegedly intended, evidence as to the intended bid was not clear and convincing. In addition, the following considerations were set forth:

"a. In his letter of 18 May 1976, bidder estimates the amount of his mistake as being in the sum of \$40,000, and outlines certain burdens to be added. He nowhere in that letter specifies a total figure of \$53,338.24, although he clearly states that the misplaced worksheet had been

discovered. Isn't it likely that he would have specified the exact dollar amounts as they appeared on the worksheet, or that the worksheet would have been presented immediately? It was not until after a request, originating in this office, for the original worksheets, that the exact figures were presented.

"b. The cost figures for the cashier and the working supervisor are not consistently treated in the 18 May letter and the worksheets. As to the Working Supervisor, the figure of \$8000.00 appears in both documents. In the letter, however, it represents the annual pay rate (p/a = per annum) while in the worksheets it represents the total cost for the entire 65 week contract period. On the other hand, as to the cashier, the letter shows an annual rate of \$5000.00, while the worksheets reflect the 65 week period and show a total cost of \$6500.00."

As we stated at 53 Comp. Gen. 232, 235 (1973):

"Even though the General Accounting Office (GAO) has retained the right of review, the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency and the weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by our Office unless there is no reasonable basis for the decision. 41 Comp. Gen. 160, 163 (1961); 51 id. 1, 3 (1971) * * *."

We believe that the Air Force's determination that BLE failed to provide clear and convincing evidence was reasonable with regard to the exact bid intended. However, we have recognized that an uncertainty within a relatively narrow range is not inconsistent with clear and convincing evidence of what a bid would have been. Treweek Construction, B-183387, April 15, 1975, 75-1 CPD 227, citing Chris Berg, Inc. v. United States, 426 F.2d 314 (1970). Notwithstanding this, because of our discussion below, we do not find it necessary to

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decide whether the various intended possible bid prices for BLE fell within this standard.

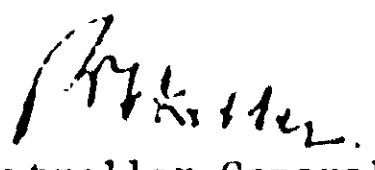
We stated in 48 Comp. Gen. 748, 750 (1969):

"The correction of mistakes in bid has always been a vexing problem. It has been argued that bid correction after bid opening and disclosure of prices quoted compromises the integrity of the competitive bidding system, and, to some extent at least, this is true. For this reason, it has been advocated that the Government should adopt a policy which would permit contractors to withdraw, but not to correct, erroneous bids. We do not agree completely with this position, since we believe there are cases in which bid correction should be permitted. We do agree, that, regardless of the good faith of the party or parties involved, correction should be denied in any case in which there exists any reasonable basis for argument that public confidence in the integrity of the competitive bidding system would be adversely affected thereby. * * *

We believe that the present case falls within that category. The correction amount requested by BLE would increase its bid to within \$3,238.79, or less than 1 percent, of the J. T. Enterprises, Inc., bid. Moreover, the bid price arrived at from the May 18 letter brings the BLE "intended" bid within less than 1/2 of one percent of the successful bid. Accordingly, we agree that correction of the bid would have been improper. See Asphalt Construction, Inc., B-185498, February 9, 1976, 76-1 CPD 82; Treweek Construction, supra; and B-177955, March 22, 1973.

In view of the above, the protest is denied.

Deputy


Comptroller General
of the United States